

## VIRGINIA BOARD OF HEALTH PROFESSIONS

### RECOMMENDED POLICY AND PROCEDURES IN DISCIPLINARY CASES INVOLVING BOARD MEMBERS

#### Background and Authority.

The enforcement of statutes and regulations governing the practice of licensed or certified health professions and occupations in Virginia involves the complex interaction of the individual regulatory boards within the Department of Health Professions, the investigative and other enforcement staff of the central agency, attorney representatives of the Office of the Attorney General, and often other organizations and individuals, each operating within broad policy established in statute and in regulations.

Regulatory boards within the Department are authorized "to take appropriate disciplinary action for violations of applicable law and regulations," and "to revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations" (Code of Virginia Sec. 54.1-2400). More specific authority appears in the statutes related to each regulatory board and in regulations promulgated by each board.

The Director of the Department is authorized "to receive all complaints made against regulated health professionals; to develop administrative policies and procedures governing the receipt and recording of complaints; to monitor the status of actions taken under the auspices of the boards regarding complaints until the closure of each case; [and] to provide investigative and such other services as needed by the boards to enforce their respective statutes and regulation " (Code Sec. 54.1-2505). More specific authority related to the Director's duty to enforce statutes and regulations and to the authority of investigative personnel appears in Code Sec. 54.1-2506.

The Board of Health Professions is authorized "to evaluate the need for coordination among the health regulatory boards and their staffs and report its findings and recommendations to the Director and the boards," "to advise the Governor, the General Assembly and the Director on matters relating to the regulation . . . of health professions and occupations," and "to review periodically the investigatory, disciplinary and enforcement processes of the Department and the individual boards to ensure the protection of the public and the fair and equitable treatment of health professionals" (Code Sec. 54.1-2510).

The Department of Health Professions receives and adjudicates nearly 2,500 complaints or reports against regulated practitioners and facilities each year. On rare occasions these complaints or reports allege violations of statutes or regulations by sitting members of the boards. These cases warrant special attention by virtue of the substantial authority

vested in board members in their official roles, and by heightened public expectations for protection and for fair play and equitable treatment when board members are the targets of complaint or are respondents in disciplinary cases.

The Director of the Department has requested assistance from the Board of Health Professions to guide him in directing agency staff and in ensuring appropriate conduct by regulatory boards in such cases. This report to the Director of the Department of Health Professions presents the recommendations of that Board. The report was approved by the full Board of Health Professions on October 20, 1992.

### **Organization of the Report and Recommendations.**

The discussion and recommendations which follow are organized in the sequence in which complaints and disciplinary cases are: (1) received and assessed for jurisdiction; (2) investigated, and; (3) managed by individual boards following completion of the investigation.

#### **1. Complaint received and determination of jurisdiction.**

Complaints or reports of alleged violations may be received by anyone who functions within the organizational structure of the Department, but all such complaints or allegations are required by Department policy to be transferred immediately to the Investigation Division of the Department.

Upon receipt, complaint intake personnel make preliminary determinations as to whether the complaint or allegation appears to fall within the jurisdiction of boards within the agency. These determinations are then confirmed by other staff of the Investigation Division, often in consultation with board members or board staff.

The Board of Health Professions recommends that no special handling of complaints or other allegations against board members occur at this point, except that no board member should be involved in determination of jurisdiction when he or she is the target of the complaint, report or other allegation.

##### **a. No jurisdiction/complaint referred to another agency.**

No special handling is recommended at this point. If complaints or allegations are referred to other agencies they should be handled routinely without reference to the board membership of the target of the complaint or allegation. As in all other cases, no notice of this referral should be made to the regulatory board or staff or to the target of the complaint or allegation.

b. Jurisdiction determined and assignment of priority code.

If jurisdiction is determined, a priority code is assigned and the complaint or allegation is docketed as a "case" within the Complaint Tracking and Reporting System (CTARS). All subsequent actions regarding the case are tracked and reported by CTARS in routine and special reports to agency management, presiding officers of boards, and board administrators.

The interests of the regulatory board and the public are best served by resolving complaints against board members as quickly as possible.

To facilitate timely processing in the interest of the respondent, the public, and the efficient operation of the board, the Board of Health Professions recommends that investigation of cases involving board members be expedited.

Because all subsequent action is tracked and reported by CTARS, it is usually at this point that board officers and board administrators become aware officially of a case involving a board member.

No matter when or how board administrators, board officers, or board members become aware of a case involving a board member, it is important that care be taken in the management of the case to preclude any later allegation of impropriety.

Upon receipt of information that a board member is the subject of a complaint or allegation which has been docketed into CTARS, the Board of Health Professions recommends that the board administrator and presiding officer of the board seek advice from the Office of the Attorney General.

Board members and staff should refrain from any discussion of the case except as required for the proper administration and management of the case.

2. Administrative or field investigation.

Once jurisdiction is established and a priority assigned, the case is referred for field investigation or for "desk" investigations by investigative staff.

Administrative or field investigation of cases involving board members should be handled in the same manner as all other cases, except that these cases should be expedited. Investigators should refrain from any discussion of the case with board members or others

unless these individuals are a part of the official investigation.

3. Case considered by the regulatory board.

When investigative reports are completed, the report is filed with the regulatory board. The board then considers the case to determine probable cause, hears the case in informal conference or formal proceedings, and closes the case with or without a finding of violation or the imposition of a sanction.

The following recommendations should apply during the period in which the case is active (i.e., until the case is formally closed).

The presiding officer of the regulatory board, or the chair of the board's disciplinary committee, should confer with counsel upon receipt of an investigative case report in which a sitting board member is a respondent.

If the presiding officer or disciplinary committee chair is the respondent, management of the case should be delegated by the board to another officer or member.

All board members who will be involved in the further adjudication of the case are encouraged to examine their relationship with the respondent and disclose any facts which could give rise to subsequent allegations of bias or prejudice. Such disclosures should be reviewed by board counsel and appropriate action taken.

Board policies vary with regard to the closing of cases for insufficient evidence or the further processing of cases in which probable cause is found. In some instances, board administrators are delegated authority to close cases for insufficient evidence, or to move cases forward when probable cause is found.

In all cases in which a board member is a respondent, board administrators should obtain the concurrence of the board's presiding officer or other duly authorized board member before a case is closed for insufficient evidence or moved forward when probable cause is found.

No board member should be involved in a decision to close a case in which he or she is a respondent.

For cases in which formal hearings are not required by law, boards may choose to adjudicate a case through informal fact-finding proceedings and the offer of a consent order (Code Sec. 9-6.14:11.). The scheduling of formal proceedings may be made difficult or impossible if sufficient board members are not available by virtue of recusal or for other reasons. Presiding officers and board administrators, in

consultation with counsel, should anticipate these potential problems and attempt to resolve them.

The Board of Health Professions recommends that the legal counsel for the regulatory board be present at any informal conference involving a sitting board member.

It is recommended that the services of a hearing officer be secured for all formal hearings of cases involving board members as respondents. The hearing officer should be asked to prepare findings of fact and conclusions of law for board consideration. The individual regulatory board, however, retains authority to adopt, reject, or amend the hearing officer's recommendations.

Board members who are respondents should not participate either in the determination of board findings or of any sanction should a finding of violation be determined. It is also suggested that board member respondents refrain from participating in disciplinary hearings involving similar allegations, facts, issues, or violations while their case is in active status.

The Board of Health Professions appreciates this opportunity to be of assistance to the Director of the Department of Health Professions. The Board will be pleased to provide additional consultation upon request by the Director or invitation by regulatory boards within the Department.